

The Honorable Judge Christopher M. Alston

Chapter 11

Hearing Date: July 16, 2020
Hearing Time: 9:30 AM
Hearing Location: *Telephonic*
Response Date: July 9, 2020

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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF WASHINGTON, AT SEATTLE

In re:

No. 20-11541-CMA

V. S. INVESTMENT ASSOC., LLC

Debtor.

**DECLARATION OF STUART HEATH
IN SUPPORT OF BRMK LENDING,
LLC'S MOTION FOR RELIEF FROM
STAY TO PROCEED WITH
RECEIVERSHIP OR TO ABSTAIN OR
DISMISS CASE**

I, Stuart Heath, upon oath, declare as follows:

1. I am a citizen of the United States of America over eighteen years of age. The statements contained in this declaration are based upon my personal knowledge. I would reaffirm and restate these statements in any proceeding.

2. I am one of the principals of Elliott Bay Asset Solutions, LLC (“Elliott Bay” or the “Receiver”), the general receiver appointed in King County Superior Court Case No. 20-2-01927-5 SEA (the “Receivership Case” or the “Receivership Estate”) filed against now-debtor V. S. Investment Assoc., LLC (“V. S. Investment” or the “Debtor”). A true and correct copy of

**DECLARATION OF STUART HEATH IN SUPPORT
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1 the Order Appointing General Receiver (the “Appointment Order”), dated February 5, 2020, is
2 attached hereto as **Exhibit A**.

3 3. Upon entry of the Appointment Order, I immediately examined and then took
4 possession of that property of the Receivership Estate located at 2467, 2469, 2465, and 2463
5 South College Street, Seattle, Washington 98144, identified by King County parcel numbers
6 159460-0092, 159460-0093, 159460-0091 and 159460-0090 (the “College Street Property”),
7 which is owned by the Debtor. The other property of the Receivership Estate located at 4415
8 Priest Point Drive Northwest, Marysville, Washington 98271, identified by Snohomish County
9 parcel number 005482-000-024-06 (the “Priest Point Property”), is owned by non-debtor VS
10 Developing, LLC, an affiliate of the Debtor. I have not been able to get physical access to that
11 property and I understand it is occupied by Valentin and Viktoriya Stelmakh, principals of the
12 Debtor, who have been uncooperative.

13 4. Before the receivership commenced, the Debtor had already entered into
14 purchase and sale agreements for the sale of each of the units of the College Street Property
15 identified above. The total sale price agreed to by the Debtor was \$2,845,000.00. Each of the
16 purchase and sale agreements entered into by the Debtor had contingencies and/or punch list
17 items, at least some portion of which had not been completed. It is my understanding that the
18 Debtor was either unwilling or unable to meet the contingencies or complete the punch list
19 items that were required for sale. Attached hereto as **Exhibits B-E** are copies of those
20 purchase and sale agreements entered into by the Debtor.

21 5. I understand that the borrower/Debtor had walked away from BRMK and the
22 College Street Property and had not completed final items needed to complete the existing sales
23 contracts. Those Purchase and Sale Agreements were rescinded.

24 6. On or about February 28, 2020, the Receiver entered into a Commercial &
25 Investment Real Estate Purchase & Sale Agreement with a party known as Alpine Homes NW,
26

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1 LLC (“Alpine Homes”), to purchase both Properties. The purchase price was to be
2 \$3,352,000.00. While the total sales price wasn’t officially allocated, I believed the price
3 reflected the value of the College Street Property of \$2,845,000.00 and the Priest Point Property
4 of approximately \$507,000. Unfortunately, Alpine Homes failed to pay timely the earnest
5 money as set forth in the controlling purchase and sale agreement and failed to close the sale as
6 required. As such, I authorized a lawsuit to be filed against Alpine Homes for breach of the
7 earnest money provisions and purchase and sale agreement, and the Complaint was filed on May
8 21, 2020, under King County Superior Court Case No. 20-2-09147-2 SEA (the “Alpine Homes
9 Case”). A true and correct copy of the Complaint filed in the Alpine Homes Case is attached
10 hereto as **Exhibit F**. The value of this claim/asset of the Receivership Estate is estimated to be
11 \$167,000.00, plus expenses, attorneys’ fees, and costs. The Receiver would prefer to pursue this
12 claim in the Superior Court.

13 7. After the sale to Alpine Homes fell through, the Receiver accepted a secondary
14 offer for just the College Street Property, entering mutual acceptance with parties known as
15 Ahmet and Stephanie Gurbuz on May 21, 2020. The purchase price was \$2,845,000.00 for the
16 College Street Property and accepted the College Street Property “as is/where is.” The sale
17 amount tracks with the offer that the Receiver had previously received from Alpine Homes for
18 all of the Properties as well as the offers the Debtor had previously negotiated and accepted
19 prior to the commencement of the Receivership. The Receiver had just filed its Motion for
20 Order Authorizing Sale of the College Street Property when the Debtor’s bankruptcy case was
21 filed. Mr. and Ms. Gurbuz also made an offer to purchase the Priest Point Property for
22 \$550,000.00. This offer was subject to an inspection contingency and had not yet been noted
23 for approval by the time the bankruptcy was filed.

24 8. Again, all units of the College Street Property were under contract at the time the
25 bankruptcy was filed for a total purchase price of \$2,845,000.00. The buyer has indicated to the
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1 listing broker that they may still be filling to close on the sale if the bankruptcy is dismissed or
2 relief from stay granted.

3 9. In the Receiver's opinion, \$2,845,000.00 is the current value of the College Street
4 Property. I have reviewed the Debtor's schedules and statements, and I understand that the
5 Debtor is asserting a gross value of the College Street Property of \$3,800,000.00. This value
6 assertion is almost \$1,000,000.00 more than the current offer and purchase and sale agreement
7 by Mr. and Ms. Gurbuz, and the previous offers that had been accepted by the Debtor (with still
8 unmet conditions and contingencies). I believe that the Debtor is overstating the value of the
9 College Street Property significantly.

10 10. In addition to BRMK's lien against the Properties in the amount of \$4,287,350.29,
11 there is a purported lien in favor of Paul Greben (the principal of Alpine Homes) against the
12 College Street Property in the claimed amount of \$598,500.00, and a purported lien in favor of
13 Ecocline Excavation & Utilities, LLC, in the claimed amount of \$137,205.00. In addition, the
14 Debtor has not paid the first half of 2020 real estate taxes assessed against the College Street
15 Property, so there are superior liens of at least \$15,600.00. Therefore, in the Receiver's opinion,
16 there is no equity in the College Street Property.

17 11. As set forth above, the Priest Point Property is not owned by the Debtor, and so
18 is not part of the bankruptcy estate. However, to the extent that it is relevant to the
19 determination whether dismissal or relief from stay is granted, my review shows that there is no
20 equity in this property. The 2020 tax assessed value of the Priest Point Property is \$902,900 and
21 the Debtor previously provided me with an appraisal for \$777,000.00. In addition to BRMK's
22 lien against the Properties in the amount of \$4,287,350.29, there is a purported lien in favor of
23 Veristone Fund I, LLC, against the Priest Point Property in the claimed amount of
24 \$7,205,622.97.

25 12. Given that there is no equity in the Properties available for other creditors, the
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1 bankruptcy should be dismissed and/or the automatic stay should be lifted so Elliott Bay can sell
2 the Properties and pursue litigation against Alpine Homes.

3 13. I make the foregoing statements upon information and belief and under penalty
4 of perjury according to the laws of the State of Washington.

5 DATED this 22nd day of June, 2020, at Redmond, Washington.

Stuart Heath
Stuart Heath
ELLIOTT BAY ASSET SOLUTIONS, LLC

**DECLARATION OF STUART HEATH IN SUPPORT
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